


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
MAY 08 2014

CLERK

THOMAS O. MORGAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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CIV 14-3003

OPINION AND ORDER
ADOPTING REPORT AND
RECOMMENDATION AND
DENYING § 2255 MOTION

On March 3, 2014, Thomas O. Morgan filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, Doc. 1, a "Motion for Resentencing," Doc. 3, and a motion to proceed in forma pauperis, Doc. 5. Based on 28 U.S.C. § 636(b)(1)(B) and Rule 8(b) of the Rules Governing Section 2255 Proceedings, this Court referred the case to Magistrate Judge Mark A. Moreno. Doc. 7. On April 4, 2014, Judge Moreno issued a Report and Recommendation recommending denial of Morgan's § 2255 motion and his motion for resentencing because they were neither cognizable nor requests for which relief could be granted. Doc. 8. Judge Moreno further recommended that Morgan's motion to proceed in forma pauperis be denied and that this Court dispose of Morgan's § 2255 motion and motion for resentencing without appointing counsel or holding an evidentiary hearing. Doc. 8.

This Court reviews a report and recommendation pursuant to the statutory standards found in 28 U.S.C. § 636(b)(1), which provides in pertinent part that "[a] judge of the [district] court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." "In the absence of an objection, the district court is not required 'to give any more consideration to the magistrate's report than the court considers appropriate.'" United States v. Murillo-Figueroa, 862 F. Supp. 2d 863, 866 (N.D. Iowa 2012) (quoting Thomas v. Arn, 474 U.S. 140, 150 (1985)).

Here, Morgan has not filed any objections to the Report and Recommendation and the fourteen days for doing so has passed. Accordingly, this Court has reviewed the Report and Recommendation under a clearly erroneous standard of review. See Grindler v. Gammon, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam) (explaining that when no objections are filed and the time for filing objections has expired, the district court “would only have to review the findings of the magistrate judge for clear error”). Finding no clear error, this Court adopts the Report and Recommendation.

For the foregoing reasons, it is hereby

ORDERED that Morgan's § 2255 motion, Doc. 1, motion for resentencing, Doc. 3, and motion to proceed in forma pauperis, Doc. 5, are denied. It is further

ORDERED that the Clerk of Court provide a copy of this Opinion and Order to Morgan. It is further

ORDERED that no certificate of appealability under Rule 11(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts will issue. It is finally

ORDERED, ADJUDGED AND DECREED that judgment of dismissal in favor of the Government and against Morgan under Rules 54 and 58 of the Federal Rules of Civil Procedure hereby enters.

Dated May 8th, 2014.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Roberto A. Lange", is written over a horizontal line.

ROBERTO A. LANGE
UNITED STATES DISTRICT JUDGE